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### Shareholder voice on executive pay

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# Shareholder Voice on Executive Pay: A Decade of Dutch Say on Pay

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**Abstract** The Netherlands adopted shareholders' say on pay over a decade ago. The general meeting of shareholders must approve the remuneration policy and any amendments to it. This Dutch approach offers fruitful insights into how say on pay works in practice. In the light of the recent European proposal to introduce a uniform say on pay, we examine the merits of the Dutch system. First, we describe the legal framework of the Dutch say on pay and its background. Then, using hand-collected voting data, information from the minutes of general meetings and ownership data for the entire Dutch say on pay period (2004–2014), we address and discuss both its direct and its indirect effects. Our study shows that, although remuneration proposals are seldom rejected, the influence of shareholders on the remuneration policy of the company is considerable. Furthermore, the Dutch approach to say on pay stimulates shareholders' dialogue and increases pressure on boards regarding remuneration matters, even in the presence of large insider shareholders.

**Keywords** Say on pay · Executive pay · Shareholder activism · Shareholder voting · Ownership structure · Corporate governance

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# 1 Introduction

The establishment of an effective system of corporate governance is based on the collaboration, monitoring and trust of three actors: shareholders, board of directors and management. Since, according to the agency theory, the latter two tend to behave opportunistically, appropriate incentives need to be installed to align the interests of shareholders with those of executive directors and management. In this view, performance-linked director compensation is an effective corporate governance tool that can be used to create these appropriate incentives. Yet, there has been a lot of criticism of these performance-linked remuneration systems. Executive pay is often considered to be ‘excessive’ and regarded as an agency cost in itself.<sup>1</sup> The board of directors, representing the shareholders when contracting with the CEO, relies too much on the latter or on conflicted remuneration consultants,<sup>2</sup> which is an important argument of the ‘managerial power theory’.<sup>3</sup> The discussion on (how to structure) executive pay is fiery and not only involves shareholders, politicians and academics; media, too, have drawn considerable attention to high levels of executive pay to so-labelled ‘fat cats’,<sup>4</sup> thereby turning this discussion into a social one.<sup>5</sup>

In order to strengthen executive compensation as a corporate governance mechanism, and as a result of shareholder lobbying,<sup>6</sup> different governments and legislators have introduced reforms in the past decade,<sup>7</sup> including shareholders’ say on pay. Say on pay systems vary widely across European countries.<sup>8</sup> The Netherlands

<sup>1</sup> For example, Ferrarini and Ungureanu (2014), at pp. 4–6. For an overview of the risks of variable pay, see Cahn and Donald (2010), at pp. 419–425.

<sup>2</sup> Bebchuk and Fried (2004).

<sup>3</sup> For an overview of the discussion, see Core and Guay (2010).

<sup>4</sup> The Economist (2003). This article starts with the sentence: ‘*NOTHING* in business excites so much interest in the wider world as the pay of top executives.’

<sup>5</sup> The comparison between executive pay and employee salaries is an example of this broader social perspective. See, for example, Fleming and O’Connor (2014). The proposal of the European Commission to amend Directive 2007/36/EC also demonstrates this social element. Proposed Article 9a(3) states: ‘[The remuneration policy] shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy or directors’ remuneration by explaining the ratio between the average remuneration of directors and the average remuneration of full time employees of the company other than directors and why this ratio is considered appropriate.’

<sup>6</sup> Thomas and Van der Elst (2015), at p. 655.

<sup>7</sup> For example, early developments in the UK established stricter disclosure requirements ‘to improve the linkage between performance and pay’, Department of Trade and Industry, ‘Byers to strengthen link between pay and performance’, Press Release, 7 March 2001.

<sup>8</sup> For an extensive overview, see Barontini et al. (2013) and Thomas and Van der Elst (2015). In this respect, it should be noted that, in 2014, the European Commission proposed to adopt a uniform European say on pay in the proposal for a new version of Directive 2007/36/EC. Similar to the UK system, the proposal provides for a binding shareholders’ vote on the remuneration policy at least every 3 years as well as for an annual advisory vote on the remuneration report: European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement, COM (2014) 213 final, 9 April 2014. The European Parliament issued a report on the proposal of the European Commission on 12 May 2015 (A8-0158/2015, 2014/0121(COD)) and approved an amended version of proposal for a Directive on 8 July 2015, at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0257+0+DOC+XML+V0//EN> (accessed on 10 December 2015).

was a frontrunner, introducing its say on pay empowerment of shareholders in 2004. In this system, shareholders have a mandatory say on the company's remuneration policy. The law provides that the general meeting *adopts* the remuneration policy, which made the Dutch approach unique for a long period of time.

The introduction of say on pay legislation adds another component to the executive pay discussion. Whereas proponents suggest that say on pay would create pressure on boards of directors to reduce executive compensation levels and stimulate the dialogue during and outside general meetings, opponents are more sceptical.<sup>9</sup> The central question in this discussion is: how effective is shareholders' say on pay in practice?

Although many articles have been written on executive pay and the body of say on pay literature is growing, a long-term analysis of the evolution and effects of say on pay is lacking. The Dutch say on pay has already existed for over a decade and thus provides an opportunity for an extensive evaluation of its effectiveness and effects. This contribution analyses shareholder behaviour regarding pay issues and provides clear insights into the impact of say on pay. The article proceeds as follows. Before conducting an empirical analysis of the merits of the Dutch say on pay in practice in Sect. 3, we introduce the Dutch corporate governance system and its legal framework for say on pay in Sect. 2. Section 4 provides our main conclusions.

## 2 The Dutch Corporate Governance System and Say on Pay

### 2.1 The Dutch Corporate Governance Framework

Until 2013, Dutch company law only provided for a two-tier board structure.<sup>10</sup> The management board is responsible for the management of the company, i.e., its day-to-day business and affairs.<sup>11</sup> The supervisory board's role is to supervise and advise the management board, as well as to monitor the general course of the company's affairs, developed and executed by the management board.<sup>12</sup> In addition, the supervisory board – 'with labour co-determination' according to some authors<sup>13</sup> – is charged with hiring and firing the members of the management board.<sup>14</sup> In addition, the supervisory board's chairman conducts the general meeting of shareholders.

<sup>9</sup> See, for example, Gordon (2009).

<sup>10</sup> This two-tier structure was mandatory only for a number of (large) companies, as the former regime provided exemptions for companies with mainly international activities. Many companies opt(ed) voluntarily for the two-tier structure. An analysis of the different types of two-tier structures goes beyond the purpose of this contribution.

<sup>11</sup> Article 2:129(1) DCC.

<sup>12</sup> Article 2:140 DCC.

<sup>13</sup> This wording is taken from Nowak (2013), at p. 475. It should be noted that the Dutch approach to labour co-determination is less far-reaching than the German co-determination system. In the Netherlands, companies that have to comply with the co-determination rules must provide the works council with the right to nominate one-third of the supervisory board. The supervisory board nominates its other members. The general meeting elects the members but can also reject the nominated supervisory board members after which a specific procedure is started (Article 2:158(9) DCC).

<sup>14</sup> In fact, in a two-tier board, the appointment of a management director takes place in three steps: the general meeting is informed of the proposed appointment, the works council is requested to provide an opinion, and the supervisory board appoints the director.

The general meeting of shareholders appoints the members of the supervisory board. The supervisory board must develop a profile of its composition, size and the required expertise of its members that it must discuss with the general meeting of shareholders and the works council.<sup>15</sup> The candidates are selected by the supervisory board itself. Furthermore, in companies with labour co-determination the works council<sup>16</sup> has the binding right to nominate one third of the members of the supervisory board. A supervisory board member is elected for a term of 4 years.

Since 2013, a Dutch company can opt for a one-tier board structure. In that case, the board must be composed of both non-executive and executive members. Whether a particular candidate will be elected as a non-executive or executive board member is decided by the general meeting of shareholders.<sup>17</sup> In case a company with a one-tier board is subject to co-determination, the rights and duties of the supervisory board are, *mutatis mutandis*, passed to the non-executive directors.<sup>18</sup> The Dutch Civil Code (hereinafter: DCC) states that the non-executive members of the one-tier board must monitor the performance of the executive members. Further, the chairman must be a non-executive member of the board of directors. In matters related to executive compensation, all executive members of the board are prohibited from being involved in the decision-making process and the setting of their remuneration.<sup>19</sup>

The Dutch corporate governance framework of listed companies is also governed by the Dutch Corporate Governance Code (hereinafter: the Dutch Code).<sup>20</sup> The company must disclose, in its annual report, whether it complies with the Code's governance principles or explain why it deviates from these principles. The Code also includes principles and best practices related to the level, composition, determination and disclosure of the remuneration of the management board,<sup>21</sup> but does not address say on pay.<sup>22</sup> Every year, the Monitoring Committee assesses the compliance of Dutch companies with the Code. The Committee found that compliance with the recommendations relating to the remuneration of the board of directors was relatively low compared

<sup>15</sup> Article 2:158(3) DCC.

<sup>16</sup> Companies that employ at least fifty employees must establish a works council. This council is composed of employees' representatives. The number of representatives lies between 3 and 25, depending on the total number of employees (Article 6 of the Works Councils Act of 28 January 1971 (*Wet op de Ondernemingsraden*), Stb. 1971, p. 1).

<sup>17</sup> Article 2:132 DCC.

<sup>18</sup> Nowak (2013), at p. 477.

<sup>19</sup> Article 2:129a DCC.

<sup>20</sup> An English version of the Dutch Corporate Governance Codes (the 2016, 2008 and 2003 versions) and the yearly Monitoring Reports (in Dutch) can be found on the website of the Monitoring Committee, at <http://commissiecorporategovernance.nl/dutch-corporate-governance-code>. In December 2016, prior to the publication of this research, the revised Dutch Corporate Governance Code (2016) was published. References to this new Dutch Code are provided in this research, but the empirical analysis in Sect. 3 contains data until 2014.

<sup>21</sup> Dutch Corporate Governance Code (2008), Principle II.2; Dutch Corporate Governance Code (2016), Chapter 3. The Dutch Code is based on the two-tier board structure. In its Monitoring Report 2012, the Dutch Corporate Governance Committee clarified that all provisions in the Dutch Code applicable to the supervisory board are also directly applicable to non-executive board members, Corporate Governance Code Monitoring Committee 2012, at p. 12.

<sup>22</sup> *Infra* Sect. 2.2. The Corporate Governance Committee amended the Code following enactment of the law regarding say on pay.

to that with the other recommendations, and urged companies to increase the compliance levels.<sup>23</sup>

## 2.2 The Dutch Say on Pay System

Article 2:135 DCC and Article 2:145 DCC jointly state which corporate constituents set the remuneration of the different types of directors and stipulate that the company must provide for a remuneration policy. Article 2:145 DCC empowers the general meeting to determine the remuneration of the supervisory board in a two-tier board structure.<sup>24</sup>

Article 2:135 DCC is more complex.<sup>25</sup> Previously, it contained the rule that the general meeting of shareholders should determine the executive

<sup>23</sup> See, for example, Corporate Governance Code Monitoring Committee (2007), at p. 45; Corporate Governance Code Monitoring Committee (2011), at p. 27.

<sup>24</sup> The Dutch Code adds in Principle 3.3 (2016 version) or Principle III.7 (2008 version) that '[t]he remuneration of a supervisory board member is not dependent on the results of the company'.

<sup>25</sup> The current version of the Article reads as follows [authors' translation, as published in Lafarre and Van der Elst, (2015)]:

(1) The Corporation shall have a policy regarding the remuneration of the Board of Directors. The policy is adopted by the General Meeting. The remuneration policy includes at least the elements as described in Articles 2:383c DCC up to and including Article 2:383e DCC to the extent that these concern the Board of Directors.

(2) When the NV has established a works council by virtue of statutory provisions, the proposal for the adoption of the remuneration policy shall only be presented to the General Meeting after the works council has been given the opportunity [...] to determine its point of view on the matter. [...].

(3) [This paragraph further elaborates on the role of the works council].

(4) The remuneration of the Directors is determined by the General Meeting in conformity with the policy referred to in paragraph 1, unless the articles of association have designated another body of the Corporation for this purpose.

(5) If the articles of association provide that a body of the Corporation other than the General Meeting determines the remuneration of the Directors, then this body shall present to the General Meeting for approval the compensation arrangements in the form of shares or rights to acquire shares. [...] The lack of approval of the General Meeting does not affect the power of representation of the responsible body of the Corporation (see also *infra* n. 49).

(5a) If in regard to a Corporation as referred to in Article 2:383b DCC the adoption of the annual accounts has been mentioned as a topic in the convening notice within the meaning of Article 2:114(1) DCC, then the specifications made by the Corporation referred to in Article 2:383c DCC up to and including Article 2:283e DCC will be mentioned jointly as a separate topic in the convening notice prior to the adoption of the annual accounts.

(6) The body referred to in paragraph 4 is authorised to adjust a bonus to an appropriate level if payment of the bonus would be unacceptable in the light of standards of reasonableness and fairness. For the purpose of the present Article, a 'bonus' is understood as the part of a remuneration package that is not fixed and entitlement to which is made dependent in full or in part on the realisation of certain goals or the occurrence of certain circumstances.

(7) [This paragraph stipulates the obligation to deduct the increase in value of shares, depository receipts or rights to subscribe for or acquire shares (options) that are granted by means of remuneration from the total remuneration to directors, following an announcement of a public take-over bid for the shares or depository receipts or a proposed merger or demerger.]

(8) The corporation is entitled to recover a bonus in full or in part to the extent that payment thereof has been made on the basis of incorrect information about the realisation of the underlying goals or about the circumstances on which the entitlement to the bonus was based. The claim can also be filed in the name of the Corporation by the Supervisory Board, the non-executive Directors where Article 2:129a DCC applies, or by a special representative appointed by the General Meeting for this purpose. Section 2 of Title 4 of Book 6 DCC shall apply accordingly.

remuneration,<sup>26</sup> but the law allowed the delegation of this power to another corporate body. Many (listed) companies delegated this authority, in their articles of association, to the supervisory board, capping shareholders' power on remuneration issues. Due to the growing concerns about large bonuses for directors, the Dutch government decided to strengthen the role of shareholders in order to restore the balance of power.<sup>27</sup> In the 2004 revised Article 2:135(1) DCC the Dutch legislator introduced the distinction between remuneration policy and remuneration packages. While the determination of the compensation packages can still be delegated, the remuneration policy must always be adopted by the general meeting of shareholders.

Only months before the introduction of this new version of Article 2:135(1) DCC, the 2003 version of the Dutch Code (also called 'Code Tabaksblat') was enacted and gained regulatory status via amendment of Article 2:391(5) DCC. Listed companies must comply – in accordance with a 'comply or explain' approach – with the provisions of the Code. Principle II.2 stated that

'the remuneration policy proposed for the next financial year and subsequent years as specified in the remuneration report shall be submitted to the general meeting of shareholders for adoption. Every material change in the remuneration policy shall also be submitted to the general meeting of shareholders for adoption. Schemes whereby management board members are remunerated in the form of shares or rights to subscribe for shares, and major changes to such schemes, shall be submitted to the general meeting of shareholders for approval.'<sup>28</sup>

The introduction of the new Article 2:135 DCC made this (part of the) principle redundant and the 2008 version of the Dutch Code revised it. The revised Code 2008 only maintained the best practice provision that the supervisory board must explain how the remuneration policy was implemented in the past financial year as well as how it plans to apply the policy in the next and subsequent years.<sup>29</sup> This provision should be read in combination with the Dutch law on this matter, i.e., the supervisory board cannot change the future policy without the general meeting's approval. Consequently, the planned policy must be in line with the policy approved by the general meeting.

### 2.2.1 Remuneration Policy

Since 1 October 2004, the general meeting is the only corporate body that can *adopt* the remuneration policy, and delegation of this right is no longer possible. Although

<sup>26</sup> Before 1 October 2014, Article 2:135 DCC stipulated that the remuneration package of directors should be adopted by the general meeting or another body as established in the articles of association.

<sup>27</sup> See, for example, Kamerstukken II (2002–2003), 28179, nr. 31, at p. 6 (authors' translation): 'For quite some time there have been concerns about the remuneration for directors of (especially) listed companies. [...] Excesses are reported in the news and the amounts suggest that directors and supervisors have lost all sense of proportion.'

<sup>28</sup> Dutch Corporate Governance Code (2003), Principle II.2.

<sup>29</sup> Dutch Corporate Governance Code (2008), Best Practice II.2.12. Dutch Corporate Governance Code (2016), Principle 3.4.1.i states that the remuneration report should describe 'how the remuneration policy has been implemented in the past financial year'. Provisions 3.4.1.ii–3.4.vi contain more detailed requirements, including the link between the remuneration policy and long-term value creation.

the Dutch law remains silent on this issue, it is assumed that the general meeting must also adopt amendments to the remuneration policy.<sup>30</sup> According to the Dutch legislature, the remuneration policy generally covers a medium or long-term period, which may indicate that the general meeting does not have to decide on minor alterations.<sup>31</sup> Dutch law and the Dutch Code<sup>32</sup> lack further guidance on what may be considered as an amendment to the remuneration policy, requiring the shareholders' vote.

The remuneration policy includes at least the elements as described in Articles 2:383c DCC up to and including 2:383e DCC to the extent that these concern the board of directors. These Articles address the information requirements of companies regarding the compensation packages of directors. As a result, the policy should include 'all aspects of remuneration'.<sup>33</sup> Article 2:383c–e DCC requires the disclosure of the base salary, the bonus, the long-term incentives, severance pay, profit sharing, share grants, stock options, and other benefits, as well as loans, advances and guarantees provided to the directors.<sup>34</sup> In an early parliamentary document about the introduction of say on pay legislation, the Dutch legislator proposed that the general meeting should adopt 'the general lines of the remuneration policy'; later, in the parliamentary discussion, this was changed into 'the remuneration policy'.<sup>35</sup> Hence, under current Article 2:135(1) DCC, the general meeting adopts not just the general outline of the remuneration policy but the full remuneration policy.

Additionally, the works council<sup>36</sup> has the right to inform the shareholders of its vision of the remuneration policy, and the council's chairman can further explain its position.<sup>37</sup> In 2010, the council was given this right to provide its opinion to the general meeting. In 2015, the Minister of Social Affairs launched an initiative to further strengthen the works council's role: within the council, an annual debate should take place about to the evolution of the relationship between the remuneration of the board and that of the employees of the company.<sup>38</sup>

<sup>30</sup> Derived from Kamerstukken II (2009–2010), 31877, nr. 5, at p. 25. See also Kamerstukken II (2009–2010), 31,877, nr. 3, at p. 9.

<sup>31</sup> *Ibid.*, nr. 5, at p. 25.

<sup>32</sup> Whereas the Dutch Code of 2003 explicitly stated that '*every material change* in the remuneration policy shall also be submitted to the general meeting of shareholders for adoption', this term is not included in the 2008 and 2016 version of the Dutch Code (emphasis added by the authors).

<sup>33</sup> Kamerstukken II (2002–2003), 28179, nr. 41. These elements include fixed pay, annual bonuses, shares, options on shares, executive loans, severance pay and other elements that may be part of executive remuneration (emphasis in text added by the authors).

<sup>34</sup> It is best practice not to provide loans, advances or guarantees unless it is in the regular course of business of the company (Principle II.2.9 in the 2008 version Dutch Code, Principle 2.7.6 in the 2016 version Dutch Code).

<sup>35</sup> Kamerstukken II (2009–2010) nr. 5, cf. *supra* n. 30.

<sup>36</sup> A works council must be established if a company employs at least fifty employees.

<sup>37</sup> This includes the works council of a subsidiary, if the employees are employed in the Netherlands. See also Lafarre and Van der Elst (2015).

<sup>38</sup> See <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/02/17/conceptwetsvoorstel-wijziging-bevoegdheden-ondernemingsraden-inzake-beloningen-en-pensioen> (accessed on 10 April 2015).



### 2.2.2 Individual Remuneration Packages

In contrast to the adoption of the remuneration policy, the determination of the compensation package of the individual members of the management board and/or of the executive board members can be delegated to another corporate body via the articles of association.<sup>39</sup> Usually, the supervisory board in a two-tier board structure is empowered to determine this individual remuneration package.<sup>40</sup> The Dutch parliament has been debating whether this ability to delegate this power must be abolished to further strengthen the position of the shareholders. However, the arguments regarding information asymmetry among shareholders and widely dispersed international ownership convinced the members of parliament to maintain this delegation facility in the articles of association.<sup>41</sup> Thus, in case the power is delegated, the shareholders can only indirectly structure the remuneration of individual board members through the adoption of (another) remuneration policy.

Article 2:135 DCC does not address the consequences if the individual remuneration package is in breach of the remuneration policy. According to some Dutch legal scholars, a decision that is not accordance with that policy should be void, pursuant to Article 2:14(1) DCC.<sup>42</sup> Conversely, others argue that it is possible to deviate from the policy if the decision is based on convincing arguments.<sup>43</sup> However, in practice, the remuneration policy is broadly formulated, which makes it unlikely that individual remuneration will not be in line with it.

In a recent case, the Dutch *Hoge Raad* (Dutch Supreme Court, *Imeko Holding v. B&D Beheer*)<sup>44</sup> stressed that it is important to have a clear division of powers between the different corporate bodies and to avoid conflict of interests in decision making related to remuneration matters.<sup>45</sup> Whereas the division of powers to determine the remuneration of the management board members and supervisory board members in a two-tier board structure is clear, there is discussion regarding the authority to determine the remuneration package of non-executive directors in a one-tier board structure.<sup>46</sup> The majority of Dutch scholars tend to agree that the remuneration package of non-executive directors is decided by the general meeting.<sup>47</sup>

<sup>39</sup> Article 2:135(4) DCC.

<sup>40</sup> Kamerstukken I (2003–2004), 28 179, B, at p. 15. See also Rechtbank Rotterdam, 27 July 2011, 332598/HA ZA 09-1634 (Docherty/SBM Offshore). Following Assink (2013), at p. 769. It is considered best practice for the supervisory board to fix the individual remuneration package (Principle II.2.9.).

<sup>41</sup> Kamerstukken II (2002–2003), cf. *supra* n. 27.

<sup>42</sup> See, for example, Huizink (2014). See also Meijer-Wagenaar (2006).

<sup>43</sup> Van Slooten and Zaal (2008).

<sup>44</sup> Van Schilfgaarde (2012), HR case *Imeko Holding v. B&D Beheer*, 6 January 2012.

<sup>45</sup> See Assink (2013) and Van Schilfgaarde (2012).

<sup>46</sup> For this discussion, see Assink (2014). See also Van Schilfgaarde (2012).

<sup>47</sup> This is in line with the Dutch corporate governance framework. Dutch statutory law and the Dutch Code indicate that the role of the supervisory board and non-executive directors is similar. It is explicitly stipulated in (the parliamentary history of) statutory law that the general meeting determines the remuneration of the supervisory board members. In the same line of reasoning, the general meeting will determine the remuneration of non-executive board members. See Assink (2014).

### 2.2.3 Shares and Options on Shares

Where the articles of association empower a body other than the general meeting to determine the individual remuneration package (Article 2:135(4) DCC), Article 2:135(5) DCC nevertheless stipulates that the general meeting must approve pay schemes in the form of shares or options. The rationale behind this rule is, according to the Dutch legislator, that shareholders may have special interests in decisions regarding share capital changes. Granting shares and options on shares may cause a dilution of the stake of incumbent shareholders and may change the composition of the share capital.<sup>48</sup> The last phrase of Article 2:135(5) DCC states that the absence of approval by the general meeting does not affect the power of representation regarding the granting of such shares or options. In other words, the lack of approval does not hinder the legal consequences of any such granting.<sup>49</sup>

### 2.2.4 Claw-Back Regime<sup>50</sup>

In 2013, the Dutch remuneration regime was complemented with a claw-back regime.<sup>51</sup> The Dutch Code already provided the supervisory board with the power to modify bonuses that were considered unfair<sup>52</sup> and to claim back variable pay that appeared to be granted on the basis of false information.<sup>53</sup> These rules were added in Article 2:135 DCC, under paragraphs (6), (7) and (8). The new legislation also capped directors' gains arising from the share price increase following the announcement of a take-over. It should be noted that a ninth paragraph in Article 2:135 DCC on shareholders' say on severance pay exceeding the fixed part of the annual pay was not adopted.<sup>54</sup>

<sup>48</sup> Kamerstukken II (2002–2003), cf. *supra* n. 27, at p. 6.

<sup>49</sup> According to Dutch Law, the decision to grant shares or options to directors is a direct external decision (*direct extern werkend besluit*) pursuant to Article 2:16(2) DCC. Although the decision will be void pursuant to Article 2:14(2) DCC without approval of the general meeting, lack of approval cannot be invoked against third parties pursuant to the last sentence of Article 2:135(4) DCC. See also Maeijer et al. (2009), para. 329.

<sup>50</sup> For more information about the Dutch claw-back regime. see Lafarre and Van der Elst (2015).

<sup>51</sup> *Wet van 11 Dec. 2013, Staatsblad, 563, tot wijziging van boek 2 van het Burgerlijk Wetboek en de Wet op het financieel toezicht in verband met de bevoegdheid tot aanpassing en terugvordering van bonussen en winstdelingen van bestuurders en dagelijkse beleidsbepalers* (Law of 11 December 2013, Staatsblad, 563, amending Book 2 of the Dutch Civil Code and the Act on Financial Supervision regarding the authority to modify and claim back bonuses and dividends of directors and executive managers).

<sup>52</sup> Dutch Corporate Governance Code (2008), Best Practice II.2.10. The best practice provision indicates that 'if a variable remuneration component conditionally awarded in a previous financial year would, in the opinion of the supervisory board, produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the supervisory board has the power to adjust the value downwards or upwards.'

<sup>53</sup> *Idem*, Best Practice II.2.11 2008 Dutch Code.

<sup>54</sup> Kamerstukken II (2012–2013) 32512, 18. Currently, Principle 3.2.3 (Principle II.2.8 in the 2008 version of the Dutch Code) of the Dutch Code requires that the severance pay should be limited to the fixed part of the annual salary, or, when unfair for a director who is dismissed during the first term, twice the fixed part of the annual salary. The proposal for this ninth paragraph explains that a significant part of listed companies do not follow this best practice provision without substantial explanation. Accordingly, codification of the best practice was proposed, but not accepted.

### 3 Dutch Say on Pay in Practice

In this section we investigate shareholder behaviour during the entire period of the Dutch say on pay era (2004–2014) in Dutch large and mid-cap companies. We collected the voting results, the meeting minutes and data on the shareholder structure of those companies.

#### 3.1 Methodology and Sample

In this research, we used an unbalanced *hand-collected* panel dataset with say on pay information of 44 companies over a period of 11 years (2004–2014).<sup>55</sup> The information was collected from meeting minutes, voting results and other documents disclosed on the websites of these companies.

The current Dutch Code (as well as the 2003 and the 2008 versions) requires companies to provide shareholders, upon request, with the ‘report’<sup>56</sup> of the general meeting. However, there is no specific duty for companies to disclose this information to the public. Nevertheless, many companies upload the minutes of the general meeting on their websites, making them publicly available. These minutes not only contain information about the voting results pertaining to the remuneration policy but also provide insights into shareholder concerns expressed during the meeting as well as remarks and questions about the remuneration of directors. Since 2007, European Directive 2007/36/EC requires companies to publicly divulge the voting results regarding all agenda items of the general meeting on their websites.<sup>57</sup> The Netherlands implemented this Directive through the *Wet Implementatie van de Richtlijn Aandeelhoudersrechten* (Act Implementing the Shareholder Rights Directive),<sup>58</sup> which only came into effect on 1 July 2010.<sup>59</sup> While this Act only requires the disclosure of the ‘bare’ voting results, most companies continued to comply with 2008 Dutch Code Principle IV.3.10, disclosing the detailed minutes of the meeting. Other companies that previously did not disclose this information started publishing either the voting results or the detailed minutes.

Besides the disclosed minutes of the general meetings and/or documents on voting results, we also made use of the ownership structure data provided in the companies’ annual reports and included in the registers of the Dutch *Autoriteit Financiële Markten* (Authority for the Financial Markets – AFM).<sup>60</sup>

Our sample consists of those companies that cumulatively complied with the following requirements: (1) the company had its registered office in the

<sup>55</sup> All minutes and documents are on file with the authors.

<sup>56</sup> Principle 4.1.10 of the 2016 version (previously Principle IV.3.10 in the 2008 version, Principle IV.3.8 in the 2003 version). Presumably the Dutch Code refers to the minutes of the general meeting.

<sup>57</sup> Article 14 of Directive 2007/36/EC.

<sup>58</sup> Kamerstukken I (2009–2010) 31746, A.

<sup>59</sup> Current Article 5:25 ka(3) Financial Supervision Act (Wft) jo. Article 2:120(5) DCC.

<sup>60</sup> This information can be retrieved from <http://www.afm.nl>. Shareholders are required to disclose their substantial shareholdings and short positions pursuant to Article 5:38 Wft. Article 5:38(4) Wft sets the thresholds for the disclosure obligation at 3, 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95%.

**Table 1** Sample of AEX and AMX companies (2004–2014)

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
#	14	22	26	32	42	43	44	44	43	43	43

Netherlands; (2) it was a member of the Amsterdam Exchange Index (AEX-25) or Amsterdam Midcap Index (AMX-25) at the end of December 2014 or at least for a period of five consecutive years during the period 2004–2014; and (3) it disclosed the voting results or minutes of the general meeting for at least five consecutive years during the period 2004–2014. During this 11-year period, 49 companies were member of the AEX and 60 of the AMX. These two samples together contain a total of 88 different companies, since a number of companies were removed from one index and included in the other. Of these 88 companies, 48 met the first two sample requirements. Regarding 4 of these 48 companies, no information about general meetings had been available for five or more years. The list of 44 Dutch companies can be found in the “[Appendix](#)”.<sup>61</sup>

Of the 44 companies in our sample, only 4 have a one-tier board structure. These companies are Gemalto, Reed Elsevier, Unit4 and Unilever.<sup>62</sup>

Many of these 44 companies do not keep the minutes of all former meetings on their websites, nor regularly update their websites. After contacting investor relations officers, we were able to collect information related to the general meetings of 14 companies in 2004, which swiftly increased to more than 40 companies in 2008–2014. An overview of the information available on these companies’ websites in December 2015 is shown in the “[Appendix](#)”. Table 1 provides an overview of sample sizes per year.

### 3.2 Sample Statistics

The companies in our sample organised 413 general meetings. Of these meetings, 19 were extraordinary general meetings.<sup>63</sup> At 151 general meetings, a resolution about the remuneration policy was an agenda item. Shareholders could vote for a proposal concerning the bonuses at 36 general meetings, and proposals relating to the remuneration of the supervisory board were put on the agenda of 120 general meetings. Table 2 shows the percentage of companies with the said categories of resolutions per year.

As we have seen in the previous Section, the Dutch Code of 2003 contained a best practice principle to submit the remuneration policy to the general meeting for adoption – Principle II.2: Determination and Disclosure of Remuneration. In 2004,

<sup>61</sup> TNT Express and PostNL are not included in the sample since these companies were formed after the demerger of TNT in May 2011.

<sup>62</sup> Heineken Holding also has a one-tier board structure but Heineken, part of the AEX, has a two-tier board structure. Note that both Reed Elsevier and Unilever have a dual structure with two registered offices (Reed Elsevier NV and Unilever NV have a registered office in the Netherlands and Reed Elsevier Plc and Unilever Plc have a registered office in the UK).

<sup>63</sup> We only included extraordinary general meetings when a voting item about remuneration was on the agenda.

**Table 2** Companies per year (in %, number of companies between parentheses)

Voting item	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
(i) Remuneration policy	64.3% (9)	59.1% (13)	40.0% (11)	43.8% (14)	44.2% (19)	32.6% (14)	47.7% (21)	31.8% (14)	18.6% (8)	39.5% (17)	25.6% (11)
(ii) Bonuses	0.0% (0)	9.1% (2)	20.0% (5)	12.5% (4)	4.8% (2)	4.7% (2)	6.8% (3)	4.5% (2)	7.0% (3)	14.0% (6)	14.0% (6)
(iii) Supervisory board remuneration	28.6% (4)	59.1% (13)	30.0% (7)	43.8% (14)	28.6% (12)	18.6% (8)	27.3% (12)	50.0% (22)	18.6% (8)	23.3% (10)	23.3% (10)

shareholders of 9 of the 14 companies in our sample were given the opportunity to vote on the adoption of the remuneration policy (64% compliance rate). The introduction of the Dutch say on pay on 1 October 2004 made it mandatory to put the (existing) remuneration policy to a vote. In 2005, the other companies in our sample had their remuneration policy voted on, and two other companies postponed it to another date.

It does not come as a surprise that in the following years a relative decrease could be seen in the number of meetings that had to adopt (an amendment to) the remuneration report. During the period 2006–2008, companies were still improving and amending their policy, but from 2009 onwards, the number of changes requiring a shareholders' vote dropped to less than 40%. Only in 2010 did the remuneration policy resurrect as an agenda item at almost half of the general meetings. According to Thomas and Van der Elst (2015), this was caused by the changes to the Dutch Code in 2008 that led many companies to reconsider their remuneration policy in 2009. These amended policies had to be adopted at the general meeting of 2010.<sup>64</sup>

The study of the meeting minutes shows that there is some uncertainty about the practical consequences of Article 2:135(1) DCC relating to the approval of the remuneration policy and Article 2:135(5) DCC relating to the approval of schemes in the form of shares or options on shares. More specifically, it is unclear whether short-term and long-term incentive plans need *separate approval* by the general meeting as stipulated in Article 2:135(5) DCC or whether these plans can be adopted together with (the amendments to) the remuneration policy pursuant to Article 2:135(1) DCC.<sup>65</sup> From the parliamentary history it can be deduced that Article 2:135(5) DCC contains a *specific* requirement for schemes in the form of shares or options on shares, which further elaborates on the general provision in Articles 2:135(1) DCC and 2:135(4) DCC. Article 2:135(5) DCC requires the approval of the general meeting for the granting of (special) shares or options on shares to (individual) board members pursuant to Article 2:135(4) DCC in accordance with the current remuneration policy. In contrast, since the remuneration policy includes, according to parliamentary history,<sup>66</sup> 'all aspects' of the remuneration, including plans on shares and options on shares, we tend to conclude that separate approval of general long-term and short-term incentive plans as such will not be required if these plans are included in the (amendments to the) remuneration policy.

As a result of this legal uncertainty, some companies put separate voting items on the general meeting's agenda that concern amendments to the remuneration policy relating to the long-term and short-term incentive plans, while others do not include them as separate agenda items.<sup>67</sup> It is recommended that the Dutch legislator or –

<sup>64</sup> Thomas et al. (2014).

<sup>65</sup> See Eumedion (2012). Eumedion is the Dutch Corporate Governance Forum for investors, representing approximately 70 institutional investors.

<sup>66</sup> Kamerstukken II (2002–2003), cf. *supra* n. 33.

<sup>67</sup> At the general meeting of Heineken in 2011, shareholders separately voted for (1) adjustments of the remuneration policy; (2) amendments related to the short-term incentive plan; and (3) amendments related to the long-term incentive plan. In contrast, at the general meeting of KPN in 2014, shareholders could only vote for the proposal 'to approve amendments to the LTI plan and to amend the remuneration policy' (item 15). At the extraordinary general meeting of SBM Offshore in 2010, shareholders could vote for 'amendment to the remuneration policy 2011' (item 2) that included amendments to both the short-term and long-term incentive plan.

now – the Dutch Corporate Governance Code Monitoring Committee provide further guidance on this matter.

We report descriptive statistics concerning;

- i) proposals to adopt (amendments to) the remuneration policy *and/or* (amendments to) short-term or long-term incentive plans ('the remuneration policy');
- ii) proposals to authorise the board to grant or to issue shares or options on shares under *existing* incentive plans, including special bonuses to (individual) directors ('bonuses'); and
- iii) proposals concerning the remuneration of the supervisory board ('supervisory board remuneration'<sup>68</sup>).

Table 2 shows the number of companies per year that put at least one of these three proposals on the agenda of their meeting(s).

We also analyse the average number of times one or more resolutions regarding the remuneration policy were put on the agenda. We find that shareholders are invited to approve (amendments to) the remuneration policy on average 3.5 times during an average period of 9.1 years. Six companies in our sample amended their remuneration policy only once.<sup>69</sup> TKH Group is the only company that did not amend the remuneration policy during the sample period.<sup>70</sup> The shareholders of 9 other companies were able to vote twice during an average period of 7.9 years. Hence, around two-thirds of the companies in our sample amended their remuneration policy three or more times (4.6 times on average for this sub-sample) in an average period of 9.7 years. These numbers indicate that a large majority of companies in our sample put their (amendments to the) remuneration policy to a vote at least every 3 years.

### 3.3 Shareholder Voting Behaviour

We investigate the voting behaviour of shareholders as regards the three aforementioned categories of resolutions. Table 3 provides an overview of the voting results for these categories.<sup>71</sup>

The average shareholder dissent against the remuneration policy is 5.8%. The median opposition is only 1.9%, which indicates that regarding half of these proposals, shareholder dissent is less than 2%. The *only* rejection of a remuneration

<sup>68</sup> Including non-executive remuneration proposals.

<sup>69</sup> The average sample period is approximately 9 years.

<sup>70</sup> TKH Group is included in our sample for the period 2008–2014. The 2014 annual report of TKH group stated that the remuneration policy was adopted at the AGM of 28 April 2005, available at [http://www.tkhgroup.com/en/files/copy\\_of\\_annual-report-2014](http://www.tkhgroup.com/en/files/copy_of_annual-report-2014) (accessed on 9 December 2015).

<sup>71</sup> Calculated as: (amount of votes against)/(amount of votes against + amount of votes for) × 100%. It should be noted that in some cases the number of votes withheld is considerable.

**Table 3** Statistics on say on pay in the Netherlands (2004–2014)

Voting item	# General meetings <sup>a</sup>	Maximum opposition (%)	Mean opposition (%)	Median opposition (%)	Standard deviation (%)
(i) Remuneration policy	139 (151)	60.9	5.8	1.9	9.5
(ii) Bonuses <sup>b</sup>	33 (36)	89.0	12.0	3.2	22.5
(iii) Supervisory board remuneration	109 (120)	41.7	1.3	0.0	4.7

<sup>a</sup> At 12 general meetings the voting results regarding resolutions on (amendments to) the remuneration policy were not, or not transparently, reported. The same holds for proposals concerning bonuses at 3 general meetings and proposals concerning supervisory board remuneration at 11 general meetings (included between brackets in the reported number of AGMs). Accordingly, we were unable to report the voting results regarding these proposals. However, they were all adopted by the general meetings

<sup>b</sup> The amount of votes against a rejected resolution on a special bonus was not reported in the minutes of the general meeting of Vastned Retail in 2008. For calculation purposes, we therefore assume that 50% voted against this resolution

policy occurred in 2008.<sup>72</sup> In that year, over 60% of the shareholders dismissed Philips' new long-term incentive plan.<sup>73</sup> Other high levels of shareholder dissent were found at the meeting of SBM Offshore in 2008, where over 43% of the shareholders voted against the amendments to the remuneration policy,<sup>74</sup> and at Aalberts Industries in 2010, where 40% of the shareholders voted against this policy.<sup>75</sup> At Binckbank, 37% of the attending shareholders rejected the remuneration policy in 2012.

Since only one voting item concerning the remuneration policy was formally rejected (0.7%), we can conclude that the influence of shareholders on the executive remuneration (policy) is limited. However, as will be discussed below, shareholders also make use of other mechanisms to change the policy and, indirectly, the remuneration packages.<sup>76</sup>

Dissent against proposals relating to bonus plans is remarkably higher with an – on average – 12% dissent, but it should be noted that the number of AGMs in the sample is low. Consequently, the standard deviation is relatively large (22.5%)

<sup>72</sup> It should be noted that, in 2009, Royal Dutch Shell experienced similar shareholder rebellion, when 59% of the shareholders voted against the remuneration report. See Burgess and Steen (2009), at p. 1. According to Eumedion, the shareholders were against the discretionary power of the remuneration committee to grant bonuses to the executive directors in light of the moderate results of the company in comparison with its peers. See Eumedion (2009), at p. 4. While the headquarters of Shell are still in the Netherlands (in accordance with Article 79 of its articles of association), the company is incorporated in the UK and thus complies with the UK rules, including the say on pay rules relating to the approval of the remuneration report instead of the remuneration policy.

<sup>73</sup> For a discussion of this result, see Sullivan (2008).

<sup>74</sup> See the minutes of the AGM of SBM Offshore NV of 15 May 2008, at <http://www.sbmoffshore.com/investor-relations-centre/shareholder-information/share-holder-meetings/2008-2/> (accessed on 10 December 2015).

<sup>75</sup> See the minutes of the AGM of Aalberts Industries of 22 April 2010, at [https://www.aalberts.com/uploads/files/downloads/general%20meeting/minutes/notulen\\_ava\\_2010.pdf](https://www.aalberts.com/uploads/files/downloads/general%20meeting/minutes/notulen_ava_2010.pdf) (accessed on 9 December 2015).

<sup>76</sup> Cf. *infra* Sect. 3.5.



and the median is only a modest 3.2%. Three bonus plan proposals (9%) were rejected by the shareholders. At the 2014 extraordinary general meeting of Corbion, 89.4% of the shareholders voted against a special share award for the executive board members. The board had successfully sold a division of the company, and the supervisory board intended to grant the executive board a bonus which it considered to be part of the long-term incentive plan. Some shareholders entered into private negotiations with the supervisory board, forcing the latter to call an extraordinary general meeting with the bonus plan as an agenda item. The supervisory board told the shareholders that their rejection would not result in an overall abolishment of the bonus.<sup>77</sup> Consequently, not only did the shareholders reject the bonus, but a significant number of them also voted against the discharge of the supervisory board and against re-election of the chairman of the supervisory board.<sup>78</sup> At the 2009 general meeting of Vastned Retail, 87.9% of the shareholders voted against a special bonus for the extraordinary work relating to a failed take-over. In the minutes of the meeting we found that approximately half of the meeting time was spent on debating this extra bonus.<sup>79</sup> The supervisory board's support for payment of this bonus also resulted in a refusal to discharge this board. Later that year, the supervisory board called an extra meeting regarding its discharge. At this second meeting, the board announced that it would request prior shareholder approval before granting extra bonuses, thus reassuring the shareholders, who then approved the discharge of the supervisory board. Previously, in 2008, the general meeting of Vastned Retail had also rejected a bonus, but the amount of 'no' votes had not been reported in the minutes of the meeting.<sup>80</sup>

On average, the remuneration of the supervisory board was approved by close to 99% of the votes (88.7% of the meetings) in the period 2004–2014, with a standard deviation of 4.7% and a median opposition rate of 0.0%. The average shareholder dissent regarding the remuneration of the supervisory board was substantially lower than the opposition related to the remuneration policy. A paired samples *t* test<sup>81</sup> for 47 observations indicates that the mean voting outcome for these two resolutions is significantly different.<sup>82</sup> The supervisory board's remuneration was never rejected, which illustrates that the fixed compensation levels for these board members never offended the shareholders. Only exceptionally does the remuneration of supervisory board members raise significant opposition. At the 2011 general meeting of ASM International, shareholder dissent regarding the supervisory board's remuneration

<sup>77</sup> Increasing the anger of some shareholders. See Dohmen (2014).

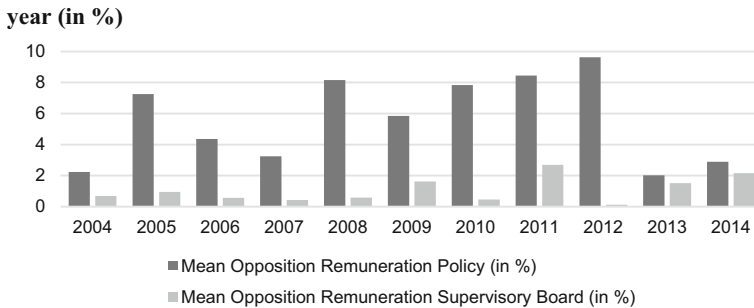
<sup>78</sup> *Ibid.*, Dohmen (2014).

<sup>79</sup> The minutes of the meeting reported the discussion of the extra bonus for the executive directors on pp. 11–20 (of the 22 pages in total), available at [http://www.vastned.nl/Upload/Notulen%20AVA%202009%20\(5\).pdf](http://www.vastned.nl/Upload/Notulen%20AVA%202009%20(5).pdf) (accessed on 9 December 2015).

<sup>80</sup> Cf. *supra* Table 3.

<sup>81</sup> In a paired sample *t* test, the voting results regarding the remuneration report and those relating to the remuneration for the supervisory board at the general meeting of a particular year of a particular company are compared. This approach guarantees that the same shareholders vote for both items, and increases the likelihood that our findings are robust.

<sup>82</sup> Statistically significant at the 1% level with a *t*-value of 3.26. We used a 95% confidence interval for this test.



**Fig. 1** Mean opposition to remuneration policy and supervisory board remuneration per year (in %)

was over 41%.<sup>83</sup> It is not clear why so many shareholders opposed the increase in the pay of the supervisory board. In 2011, the company restarted distributing a dividend, and between the end of 2010 and the general meeting in 2011 the stock price of ASM International increased significantly. Maybe many shareholders rejected the significant, relative increase of 80% for the supervisory board members to €45,000 and the 20% augmentation of the chairman's pay to €60,000. The shareholder opposition of almost 19% to the remuneration of the supervisory board members of Pharming Group has a more obvious explanation. Pharming Group is the only company in the sample that uses variable remuneration packages for its supervisory board, which is not in accordance with the Dutch Code. Many shareholders reject any (kind of explanation for a) deviation from the fixed remuneration principle for supervisory board members.

Figure 1 below shows the mean opposition to the adoption of the remuneration policy and to the remuneration of the supervisory board per year.<sup>84</sup>

Figure 1 shows that the opposition to the remuneration policy was the strongest in 2012, followed by 2011 and 2008. In 2012, a relatively low number of companies had an amendment to the remuneration policy voted on, and Binckbank experienced a 37% opposition, positively influencing this average. The relatively strong opposition to the remuneration policy in 2008–2012 may be explained by the credit crisis, the overall economic situation and the widespread public debate on executive pay at the time.<sup>85</sup> The same period experienced both the strongest and weakest opposition to the remuneration of the supervisory board: 2.3% in 2011 and only 0.1% in 2012. Remarkably, the average shareholder opposition to the two categories of resolutions – remuneration policy and remuneration of the supervisory board – is more symmetric in the last 2 years (2013–2014). The future will show whether this is just a coincidence or whether there are specific reasons for this convergence.

<sup>83</sup> The annual remuneration of the chairman increased to 60,000 euros (previously 50,000 euros) and the annual remuneration of other members soared to 45,000 euros (previously 25,000 euros). The compensation for membership of the nomination, selection and remuneration committee also increased.

<sup>84</sup> The category 'bonuses' is not taken into account due to the low amount of proposals per year. cf. *supra* Table 3.

<sup>85</sup> The discussion on the share bonus and severance pay of Rijkman Groenink, former CEO of ABN Amro, was especially fierce. See *Kamerstukken II (2007–2008)*, 17 October 2007, 14903–14917.

### 3.4 Outsider Shareholder Opposition

#### 3.4.1 Assessing Outsider Shareholder Opposition

Many companies in the Netherlands have large blockholders. Often (representatives of) these shareholders act as (supervisory) board members, and it may be assumed that in such cases the management and supervisory boards are in regular and close contact with them. It is likely that the boards present and discuss with these shareholders the agenda items before they are brought to a vote. Where appropriate, boards will amend the proposals to avoid rejection by these shareholders and, consequently, of the general meeting. However, these agenda items may still be unacceptable to ‘outsider’ shareholders. This is particularly the case with the remuneration policy, which, in a number of cases and from an economic perspective, can be considered as a related party transaction. Indeed, research shows that in Belgium outsider shareholders rejected the remuneration report at almost 20% of the meetings.<sup>86</sup>

In this section, we address the voting behaviour of these outsider shareholders regarding the remuneration policy so as to provide a more advanced analysis of Dutch say on pay. We exclude the proposals relating to the remuneration of supervisory board members since average shareholder opposition to such resolutions is relatively insignificant.<sup>87</sup> In our sample the total number of general meetings with resolutions concerning the remuneration policy and/or bonuses on the agenda is 176.

Shareholders are considered ‘insider’ shareholders in this research if expectations are that they support management proposals. These insider shareholders include trust offices, board members and founders, companies in a group structure and other blockholders that are likely to support the board of the company. A particular type of large insider shareholder is the trust office (in Dutch: *stichting administratiekantoor*). Some Dutch companies have not listed (all) their shares but issued non-voting depository receipts. The shares are issued to a trust office, which will then be the legal owner of the voting rights, and holders of non-voting depository receipts receive the financial rights and dividends.<sup>88</sup> Hence, voting rights are separated from capital rights. Further to Article 2:118a DCC, holders of such non-voting depository receipts may submit a request to receive proxies, except in takeover situations.<sup>89</sup>

One or more of these insider shareholders attended 70 general meetings of 18 different companies. Table 4 below shows an overview of the types of insider shareholders with their average voting stakes at the general meeting.

Trust offices are the most common class of insider shareholders and have a large average voting stake. The average voting block of board members and founders, though less frequently insider shareholders, is the largest, with 47.4% on average.

<sup>86</sup> Van der Elst (2013), at p. 16.

<sup>87</sup> With the exception of the two meetings of ASM International and Pharming Group, already discussed in Sect. 3.3.

<sup>88</sup> Nowak (2013), at pp. 432–433.

<sup>89</sup> In contrast, the Dutch Code (Principle IV.2 of the 2008 version, Principle 4.4 of the 2016 version) provides that the trust office shall issue proxies in all circumstances and without limitation to the holders of depository receipts who so request. The Dutch Code thus prohibits the use of depository receipts as anti-takeover device.

**Table 4** Types of largest ‘insider’ shareholders

Type of shareholder	Presence (n = 70) (%)	Average voting stake (%)
Trust offices	49	39.3
Other foundations and associations	21	26.6
Board members and founders	12	47.4
Family <sup>a</sup>	10	37.4
Corporate groups	8	15.8

<sup>a</sup> The Heineken family is the controlling shareholder of Heineken NV and holds 50.005% of the voting rights. FEMSA is considered to be an ‘allied’ shareholder of Heineken, holding 12.5% of the voting rights. Eumedion, for example, calls this shareholder a ‘*gelieerde aandeelhouder*’ (allied shareholder) in its annual report on Dutch AGMs. See Eumedion (2011), at p. 11. In our further analysis we consider FEMSA as an insider shareholder as well, but in this Table its stake is not included in the stake of the Heineken family

This high average mainly results from the combined large stakes of the four founders of TomTom.<sup>90</sup> The other types of large insider shareholders have significantly smaller, and often non-controlling, voting blocks.<sup>91</sup>

As we expected that these shareholders support the (amendments to the) remuneration policy, we recalculated overall attendance and opposition at the general meeting excluding the votes of these types of insider shareholders. Information about outsider shareholder<sup>92</sup> opposition is provided in Table 5 and is calculated as follows:

$$\begin{aligned}
 & (\text{Relative shareholder opposition}) / (\text{total percentage represented by outsider} \\
 & \quad \text{shareholders}) \times 100\% \\
 & = (\text{relative shareholder opposition}) / (100\% - \text{relative} \\
 & \quad \text{amount of votes represented by the summed voting block of all insider} \\
 & \quad \text{shareholders}) \times 100\%, \quad (1)
 \end{aligned}$$

where the ‘relative amount of votes represented by the summed voting block of all insider shareholders’ is calculated as<sup>93</sup>:

$$\begin{aligned}
 & (\text{Summed voting block of all insider shareholders}) / (\text{total relative voter turnout}) \\
 & \quad \times 100\% \quad (2)
 \end{aligned}$$

<sup>90</sup> According to Eumedion, these four founders can be classified as insider shareholders. One of the founders, Harold Goddijn, is the current CEO of TomTom. His wife, Corinne Goddijn-Vigreux, is one of the other founders. Eumedion (2010), at p. 9.

<sup>91</sup> The category ‘other foundations and associations’ contains all foundations and associations that are connected to the companies, not being trust offices.

<sup>92</sup> In this research, the category ‘outsider shareholders’ contains all shareholders that are not classified as insider shareholders.

<sup>93</sup> This formula starts from the assumption that insider shareholders attend the general meetings. Some companies report the presence of the insider shareholders in their minutes. Furthermore, the overall voter turnouts would be much lower if these insider shareholders had not attended the general meeting. Although we could not find such evidence for a couple of cases, it remains the best available method to estimate the voter turnout of outsider shareholders (this approach is based on Van der Elst (2011), at p. 18.

**Table 5** Outsider shareholder opposition (in %)

Resolution	General meetings (#)	Mean (%)	Median (%)	Standard deviation (%)
Total shareholder opposition remuneration policy	139	5.8	1.9	9.5
Outsider shareholder opposition remuneration policy	139	9.2	2.3	16.7
Total shareholder opposition bonuses	33	12.0	3.2	22.5
Outsider shareholder opposition bonuses	33	19.2	5.1	27.6

Regarding 164 of the 176 general meetings, shareholder voter turnout data were provided

Since holders of non-voting depository receipts may request voting proxies prior to general meetings, the percentage of proxies needs to be deducted from the total voting stake of trust offices in order to determine their voting power at the general meetings. Most companies disclose this percentage in the minutes of the meetings.<sup>94</sup>

The average relative amount of votes represented by the summed voting block of all insider shareholders is 42.1% (calculated in accordance with formula 2). At 26 general meetings, these insider shareholders even controlled the majority of the attending votes. In Table 5, we also calculated the outsider shareholders' approval rates regarding the remuneration policy and bonuses. The mean outsider shareholder opposition to the remuneration policy is around 3% higher than the total shareholder opposition. The same holds for outsider shareholder opposition to bonuses.

Table 6 provides an overview of the proposals to which outsider shareholder opposition was larger than 30%. It shows that outsider shareholder opposition to remuneration proposals can be significantly stronger than total shareholder opposition. Moreover, three proposals of Heineken would not have been passed without the participation of the large controlling insider shareholders. The largest opposition of outsider shareholders was found at the general meeting of Heineken in 2011. At this meeting, 98% of these shareholders voted against the amendments to the remuneration policy. At the general meetings of Heineken in 2013 and 2010, voting items regarding remuneration were rejected by outsider shareholders as well. Just like Heineken, TomTom is included three times in Table 6. Since TomTom's founders together held stakes varying from 47 to 52% of total voting rights in the

<sup>94</sup> The trust office of Eurocommercial Properties publishes an annual report that discloses the amount of votes it represented at the previous general meeting. At the time we finished our research, the report of the financial year 2014/2015, including the general meeting of 2014, was not yet available. As regards Fugro, using the ratio (amount of votes presented by trust office)/(total voter turnout) of 2013 for the year 2014, we estimated the presence of the trust office of Fugro to be 37% in 2014. (Although the actual presence of the trust office may vary (substantially), this is the best available estimation of the voting stake. Whereas the voting stake of the trust office was around 60% at the general meetings in 2008 and 2009, it subsequently declined substantially to around 40%. In 2012, the presence of the voting trust was around 39% and in 2013 around 37%). Regarding 2 companies in the sample, Ahold and Randstad, we were unable to calculate the actual presence of the trust offices (4 of the 70 general meetings). We therefore assume that these trust offices were present with their entire voting stake, varying from 6 to 11% of all voting rights (but it is possible that the current stakes are smaller).

**Table 6** Largest opposition of outsider shareholders (in %)

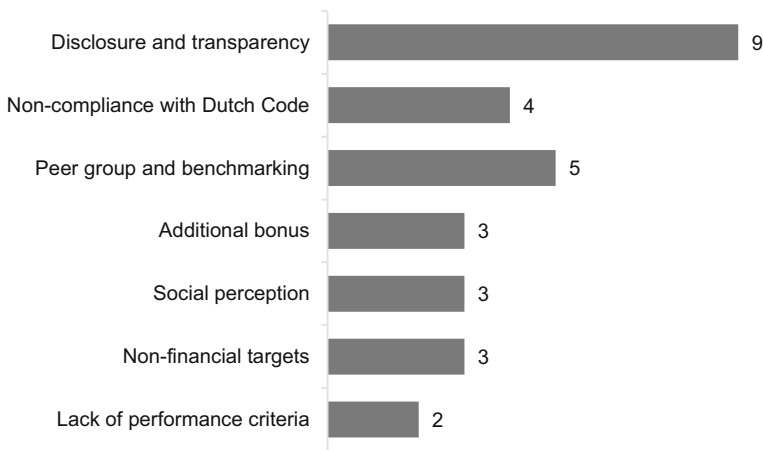
Company	Year	Voting item	Insider shareholders	Votes cast by insider shareholders (%) <sup>a</sup>	Opposition (%)	Opposition outsider shareholders (%)
1. Heineken	2011	Remuneration policy	Heineken Holding NV and FEMSA	79.8	19.8	98.0
2. TomTom	2009	Remuneration policy, option plan	Founders	57.1	8.0, 6.9	91.8, 79.3
3. Corbion	2014	Special bonus	N.A.	N.A.	89.4	89.4
4. Vastned	2009	Special bonus	N.A.	N.A.	87.9	87.9
5. Heineken	2013	Special bonus	Heineken Holding NV and FEMSA	72.6	20.2	73.7
6. Heineken	2010	Remuneration policy	Heineken Holding NV	72.8	17.6	64.7
7. Philips	2008	Long-term incentive plan	N.A.	N.A.	60.9	60.9
8. TomTom	2014	Remuneration policy, option plan	Founders	61.61	17.44, 17.01	50.7, 49.5
9. Vastned Retail <sup>b</sup>	2008	Retention bonus	N.A.	N.A.	>50.0	>50.0
10. Aegon	2011	Remuneration policy	Vereniging Aegon	36.9	30.3	48.0
11. SNS Reaal	2009	Remuneration policy	Stichting Beheer SNS Reaal	83.1	7.5	44.2
12. ING	2011	Remuneration policy	ING trust office	52.9	20.3	43.2
13. SBM Offshore	2008	Remuneration policy	N.A.	N.A.	43.0	43.0
14. ASM International	2010	Remuneration policy	Arthur Del Prado	46.5	22.6	42.2
15. Aalberts Industrie	2010	Remuneration policy	N.A.	N.A.	40.5	40.5
16. Binckbank	2012	Remuneration policy	N.A.	N.A.	37.1	37.1
17. Aegon	2007	Remuneration policy	Vereniging Aegon	45.9	20.0	37.0
18. TomTom	2013	Option plan	Founders	65.6	9.7	36.0
19. Gemalto (Axalto)	2005	Remuneration policy for CEO	N.A.	N.A.	35.4	35.4

**Table 6** continued

Company	Year	Voting item	Insider shareholders	Votes cast by insider shareholders (%) <sup>a</sup>	Opposition (%)	Opposition outsider shareholders (%)
20. Delta Lloyd Groep	2012	Remuneration policy	Aviva and Fonds NutsOhra	63.3	11.3	30.8

<sup>a</sup> Calculated according to formulas 1 and 2

<sup>b</sup> The amount of votes against this *rejected* resolution was not reported in the minutes of Vastned Retail in 2008. Please refer to Table 3

**Fig. 2** Reasons for opposition (# general meetings)

period 2009–2014, outsider shareholder opposition was relatively strong compared to total shareholder opposition.

### 3.5 Reasons for Outsider Shareholder Opposition

In this section, shareholders' reasons to vote against the remuneration proposals at the 20 meetings listed in Table 6 are analysed. Regarding each of these meetings we studied the minutes and the questions and comments of the shareholders relating to the remuneration item. We classified their concerns into seven categories of arguments, ranging from insufficient disclosure and lack of clear performance criteria to the social acceptability of the compensation. Each remuneration item may have been rejected by the outsider shareholders for different reasons. Figure 2 summarises the main reasons for shareholder opposition.<sup>95</sup>

<sup>95</sup> The minutes of the general meeting of Gemalto (Axalto) in 2005 do not report the shareholder discussion on the new remuneration policy.

Figure 2 shows that disclosure and transparency issues are the main reasons for voting against the remuneration policy. In almost half of the cases, shareholders criticised the insufficient transparency and disclosure of the performance criteria, giving this as a reason for voting against the remuneration report or the bonus arrangement. At the general meeting of Heineken in 2010, the supervisory board proposed to replace the total shareholder return (TSR) measure by ‘fundamental performance measures that are crucial to the success of Heineken in the long run’ in the long-term incentive plan. According to the outsider shareholders, these new performance measures were not transparent. The new remuneration policy of SNS Reaal in 2009 was perceived by shareholders as complex and not transparent. One shareholder explained that the new policy reminded her of the saying ‘if you can’t convince them, confuse them’.<sup>96</sup> And in 2010, over 40% of the shareholders voted against the new remuneration policy of Aalberts Industries. The Dutch Association of Stockholders (*Vereniging van Effectenbezitters* – VEB) pointed out that the proposed remuneration policy was vague and unclear. TomTom experienced strong ‘outsider’ shareholder opposition due to unclear performance criteria in 2009 and 2013, while in 2014 many ‘outsider’ shareholders did not agree with the removal of the performance criteria (included in Fig. 2 in the category ‘lack of performance criteria’).

More generally, shareholders of banks and insurance companies are particularly keen on clear and transparent performance criteria. ING, Aegon, SNS Reaal, Binckbank and Delta Lloyd all experienced opposition of more than 30% of the outsider shareholders due to the experienced persistent obscurity of the performance measurements which they believed to be less and less based on total shareholder return but more and more on other criteria which increased the discretionary power of the supervisory board.<sup>97</sup> Unexpectedly, the new regulatory framework caused part of the shareholders’ concerns. A number of (financial) companies, confronted in particular with the transposition of the (repealed) European Capital Requirements Directive III<sup>98</sup> remuneration guidelines, divided the remuneration into a fixed and a variable part. The latter part is partially deferred and conditional but based on the integration of previously longer-term performance criteria into 1-year ones. Every year these 1-year performance criteria are used to address the conditionality of the deferred payment.<sup>99</sup> Shareholders criticised both the term of the performance criteria and the (supervisory) board’s large discretionary power to make the deferred payment unconditional.

At five general meetings shareholders argued that the proposed remuneration policies were not in accordance with the Dutch Code. For example, at the general meeting of Philips in 2008, where shareholders dismissed the new long-term

<sup>96</sup> Minutes of the extraordinary meeting of SNS Reaal, 3 December 2009, at p. 21.

<sup>97</sup> Eumedion (2011), at p. 4.

<sup>98</sup> Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, OJ L 329, 14 December 2010, p. 3.

<sup>99</sup> The 2011 remuneration policy of Binckbank nicely illustrates this approach. Binckbank, ‘Remunerationbeleid 2011’, at pp. 14–15, available at [https://www.binck.com/\\_clients/binck\\_com/data/pdf/binckbank\\_beloningsbeleid\\_11\\_nl.pdf](https://www.binck.com/_clients/binck_com/data/pdf/binckbank_beloningsbeleid_11_nl.pdf) (accessed on 3 January 2015).



incentive plan, shareholders indicated that the proposal did not comply with the Dutch Code. More specifically, the proposed option scheme to grant options unconditionally was not in line with best practice provision II.2.1 of the 2003 Dutch Code, which states: '[O]ptions to acquire shares are a conditional remuneration component, and become unconditional only when the management board members have fulfilled predetermined performance criteria after a period of at least 3 years from the grant date'. According to the shareholders, these performance criteria were not included in the new long-term incentive plan.

Shareholders also posed critical questions about peer groups that were used to determine the remuneration levels, as well as about changes to these peer groups. In a particular case, a shareholder asked whether the larger market capitalisation of reference companies in the peer group had been taken into account.<sup>100</sup>

Three proposals concerning bonuses were rejected because shareholders did not agree with the company's reasons for granting an *additional* bonus to the members of the management board. According to the shareholders, the 'special' or 'extraordinary' activities for which special bonuses would be granted either had not been performed excellently<sup>101</sup> or were considered by the shareholders to belong to the current tasks of the management board for which no special bonus should be granted.<sup>102</sup>

The category 'social perception' contains all social arguments made by shareholders. The shareholder discussion at the general meeting of ING in 2011 largely concerned the public and political commotion about the proposed remuneration policy prior to the general meeting.<sup>103</sup> At the general meeting of Heineken in 2010, the large gap between executive pay and employee salaries was explicitly mentioned by the shareholders who voted against the remuneration policy.<sup>104</sup> Shareholders argued that, whereas executive pay levels continued to increase, the company cut costs and lowered employee salaries. At the general meeting of Heineken in 2013, one shareholder pointed to the stagnated employee salary levels while the board was granted an additional bonus.<sup>105</sup>

At other general meetings, some shareholders proposed to put more emphasis on non-financial performance indicators.<sup>106</sup> This indicates that shareholders are all but a homogeneous group. Many shareholders are often reluctant to approve the use of non-financial indicators due to their vagueness, the discretionary power of the

<sup>100</sup> A shareholder addressing the chairman of the general meeting of Aegon in 2007.

<sup>101</sup> An argument used by the shareholders of Heineken at the general meeting of 2013.

<sup>102</sup> Arguments of shareholders at the general meetings of Corbion in 2014 and Vastned in 2009.

<sup>103</sup> Minutes of the 2011 AGM of ING NV, 9 May 2011, at pp. 11–18, at <http://www.ing.com/Investor-relations-1/Algemene-Vergadering/Jaarljkse-Algemene-Vergadering/Jaarljkse-Algemene-Vergadering/Archief.htm> (accessed on 10 December 2015).

<sup>104</sup> Minutes of the 2010 AGM of Heineken NV, 22 April 2010, at p. 46 (not available on website).

<sup>105</sup> Minutes of the 2013 AGM of Heineken NV, at pp. 34–46. See also the article 'Ophef over bonus topman Heineken', at <http://nos.nl/artikel/499722-ophef-over-bonus-topman-heineken.html> (accessed on 10 December 2015).

<sup>106</sup> At the general meeting of Aalberts Industries in 2010, shareholders proposed to add 'sustainability' as a long-term performance indicator (minutes of the AGM of Aalberts Industries of 22 April 2010, at p. 17, at [https://www.aalberts.com/uploads/files/downloads/general%20meeting/minutes/notulen\\_ava\\_2010.pdf](https://www.aalberts.com/uploads/files/downloads/general%20meeting/minutes/notulen_ava_2010.pdf) (accessed on 14 December 2015)).

(supervisory) board and the weaker relationship of these criteria with shareholders' interests. Finally, shareholders sometimes oppose bonuses regarding which no performance criteria were used.<sup>107</sup>

### 3.6 Indirect Say on Pay

Contrary to some other European countries, in the Netherlands the shareholders do not have an advisory or mandatory vote on the remuneration report. Consequently, shareholders of Dutch companies have no direct means of showing their discontent with the implementation of the approved remuneration policy. However, the general meeting minutes show that shareholders may use other paths to signal their discontent *ex post* or *ex ante*. More specifically, shareholders use their say on pay regarding the remuneration policy to influence executive pay *ex ante*, but they can also enter into a dialogue with the company to have a remuneration policy that could lead to unacceptable individual remuneration packages withdrawn even *before* it comes to a vote. Shareholders may withhold their support for discharging or for re-electing the members of the supervisory board in order to signal their discontent with remuneration issues *ex post*. These different types of 'indirect' say on pay can be even more influential than showing discontent by voting against the remuneration policy. Although part of these dialogues take place behind the scenes, minutes of meetings and other documents illustrate the importance of both *ex post* and *ex ante* mechanisms.

First, say on pay also stimulates the dialogue between shareholders and directors prior to general meetings. In other words, the threat of a rejection of the remuneration policy or (too) painful shareholder discussions during general meetings may cause companies to formulate their remuneration policy proposals more carefully. The 2012 general meeting of Wereldhave clearly shows this additional effect of say on pay. Prior to the general meeting, the proposal regarding the variable remuneration component of the remuneration policy was modified and simplified '[i]n light of responses by a number of shareholders on the original proposal for variable remuneration'.<sup>108</sup> The minutes of the 2009 meeting of KPN state that the company modified its criteria for granting bonus shares after critical comments by shareholders.<sup>109</sup>

Secondly, when shareholders signal their discontent with a proposed amendment to the remuneration policy, the (supervisory) board can decide to withdraw the

<sup>107</sup> Like shareholders did in 2008 regarding the bonus to be granted to the board members of Vastned.

<sup>108</sup> Minutes of the general meeting of Wereldhave, 23 April 2012, at p. 7, at [http://www.wereldhave.com/sites/default/files/Wereldhave\\_Image\\_Bank/PDF/Minutes\\_General\\_Meeting\\_of\\_Shareholders\\_of\\_WH\\_23april12.pdf](http://www.wereldhave.com/sites/default/files/Wereldhave_Image_Bank/PDF/Minutes_General_Meeting_of_Shareholders_of_WH_23april12.pdf) (accessed on 12 December 2015).

<sup>109</sup> Outside our sample, Eumedion reported that at the general meeting of Van Lanschot in 2009 the remuneration policy was modified, Eumedion (2009), at p. 1.

agenda item. In 2009, Heineken did so with two agenda items regarding amendments to the remuneration policy and long-term incentive plan prior to the general meeting. In its press release, it clarified: '[G]iven the public debate regarding executive remuneration and the request to freeze the 2009 salaries of the Executive Board ... the Supervisory Board has decided to withdraw the proposals'.<sup>110</sup> In 2009, Randstad, too, withdrew a proposal to amend the remuneration policy, indicating in a press release that '[i]n view of the current economic circumstances and the proposal not to pay dividend on the ordinary shares, the scheduled changes to the peer group and the variable remuneration will now also be cancelled'.<sup>111</sup>

Furthermore, shareholders can refuse to discharge the (supervisory) board when they do not agree with how the remuneration policy is applied. In 2009, the shareholders of Vastned Retail rejected a special bonus for the board of directors by almost 88% of the votes. At this meeting, 65% of the shareholders also voted against the discharge of the supervisory board, due to a lack of response to the rejection of a similar bonus at the general meeting in 2008. Discharge is considered a key feature for the (supervisory) board in the Netherlands. Six weeks after this meeting, Vastned Retail called an extraordinary general meeting in order to hold a second vote on the discharge of the supervisory board. At this extraordinary general meeting, the supervisory board stressed that it would no longer grant any such bonuses in the future; accordingly, the majority of shareholders voted in favour of the discharge. The shareholders of KPN also used the discharge of the supervisory board at the general meeting in 2009 to put pressure on the former regarding, for instance, its monitoring duties, in particular in relation to compensation practices and levels: over 41% voted against the resolution to discharge the board members. The shareholders' discontent concerned in particular the absence of consultation of the general meeting, which was considered superfluous by the board: the board argued that the previously approved remuneration policy provided sufficient ground for not consulting the meeting.<sup>112</sup> Although the supervisory board was discharged, it confirmed that, in future, it would consult the general meeting before implementing any such amendments. At the 2009 general meeting of ASML, shareholders expressed their dissatisfaction with the level of the bonuses. Although ASML reported a loss for the year 2009, directors' bonuses actually increased. Seven percent of the shareholders voted against discharge of the supervisory board in order to show their dissatisfaction. In 2014, the supervisory board of Heineken NV

<sup>110</sup> Press Release, 9 April 2009, 'Heineken amends agenda for annual general meeting of shareholders', at <http://www.theheinekencompany.com> (accessed on 15 December 2015). Outside our sample, we noticed that the Kas Bank withdrew its amended remuneration policy 2009 as an agenda item after consultation with a number of large shareholders.

<sup>111</sup> Press Release, 'Randstad updates agenda AGM', 17 March 2009, at <http://www.ir.randstad.com/> (accessed on 14 December 2015).

<sup>112</sup> Andriessen (2009), at p. 15.

lowered the performance goals for the management board in order to meet the requirements regarding long-term performance pay. Dissatisfied with this board decision, more than 75% of the attending outsider shareholders voted against discharge of the supervisory board, resulting in a 20.8% opposition to this resolution. The chairman of the board was displeased to find out that only with the support of the majority shareholders were he and his team discharged.

Finally, dissatisfied shareholders recently found a new mechanism to address perceived inadequate compensation practices. For example, at the 2014 Corbion AGM, in addition to opposing the supervisory board's discharge – with more than 26% of the votes –, more than 31% of the shareholders voted against re-election of the supervisory board member who had joined the remuneration committee as a result of a special transaction pay in the form of a share grant.

## 4 Conclusion

In this research, we investigated the effects and effectiveness of Dutch shareholders' say on pay. We conclude that say on pay indeed stimulates shareholders' dialogue and increases pressure on boards regarding remuneration matters.

Our study finds that the Netherlands has developed a specific and unique approach to say on pay. Shareholders are invited to participate in the discussion, development and adoption of an appropriate remuneration policy. It is shown that it is not an easy task to provide for a clear and straightforward say on pay rule, as illustrated by the ambiguous application of the Dutch law regarding incentive plans. However, overall, the Dutch legislator went for a balanced approach by only opting for a mandatory vote when the remuneration policy is altered. Our results show that this approach is adequate, as it not only has spontaneously resulted in a vote at least every 3 years in many companies, but also allows other companies to apply a satisfying compensation policy for longer periods. These companies would face unnecessary extra costs if the remuneration policy required, for example, triennial approval. Furthermore, in those companies where shareholders would like to see the remuneration policy amended, they can use their right to put the item on the agenda.

The right to adopt (amendments to) the remuneration policy has significantly increased shareholders' engagement. Over the years, many discussions about the adequacy of the proposed remuneration policy have taken place at general meetings of shareholders. In this respect, shareholders value communication and disclosure. The many questions shareholders raised during the meeting as well as the diligent use of the voting right when approving or rejecting proposed (amendments to) remuneration policy have shown that the argument that shareholders lack the appropriate tools for assessing the remuneration policy is at least exaggerated.

The remuneration policy was rejected only once, but our analysis has shown that the effects of shareholders' adoption right reach much further. Debates taking place before the general meeting and criticising – but adopting – remuneration policies influence the behaviour of companies in developing future amendments to compensation policies and even indirectly remuneration practices. Although the presence of large insider shareholders protects companies from rejection of remuneration proposals, the social aspects of executive pay discussions attract major attention from the media, thereby creating incentives for such companies to avoid lower approval rates as well as major outsider shareholders' rejection.

Shareholders tend to vote against proposals that are not transparent or not in line with the Dutch Code, thereby forcing board members to become more accountable. Shareholders may also signal their dissatisfaction *ex post* by voting against other agenda items, such as discharge of the (supervisory) board. We are of the opinion that such 'figurative' use of a board's discharge or re-election of a board member because of discontent with compensation practices should be avoided. At the same time, such application of voting rights illustrates the importance of providing a platform for shareholders to discuss remuneration packages of directors after the remuneration policy has been adopted. It shows that there is room for further improvement. A separate say on pay right regarding the remuneration report can overcome the said figurative use.

The added value of the Dutch say on pay indicates that the introduction of say on pay can be advantageous to other countries as well, including those with a more concentrated corporate ownership structure. The European Commission's proposal to adopt a European say on pay is definitely a step in the right direction.

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## Appendix

See Tables 7 and 8.

**Table 7** Sample of AEX and AMX companies (2004–2014)

#	Company	#	Company
1	Aalberts Industrie <sup>d</sup>	23	ING
2	Accell Group <sup>d</sup>	24	KPN <sup>c</sup>
3	Aegon	25	Nieuwe Steen Investments <sup>d,h</sup>
4	Ahold	26	Nutreco
5	Akzo Nobel <sup>d</sup>	27	Ordina
6	AMG <sup>d</sup>	28	Pharming Group <sup>d</sup>
7	Arcadis	29	Philips
8	ASM International <sup>b</sup>	30	Randstad <sup>a</sup>
9	ASML	31	Reed Elsevier (RELX) <sup>b</sup>
10	BAM Groep, Koninklijke	32	Royal Imtech
11	Binck Bank <sup>a</sup>	33	SBM Offshore <sup>a</sup>
12	Boskalis Westminster <sup>c</sup>	34	Sligro Food group <sup>c</sup>
13	Brunel International <sup>a</sup>	35	SNS Reaal <sup>g,l</sup>
14	Corbion <sup>d</sup>	36	Ten Cate <sup>a</sup>
15	Corio <sup>j</sup>	37	TKH Group <sup>d</sup>
16	Delta Lloyd <sup>f</sup>	38	TomTom <sup>b</sup>
17	DSM	39	Unilever <sup>d</sup>
18	Eurocommercial Properties <sup>c</sup>	40	Unit4 <sup>e,i,k</sup>
19	Exact Holding <sup>a,k</sup>	41	Vastned Retail <sup>d</sup>
20	Fugro	42	Vopak
21	Gemalto <sup>a</sup>	43	Wereldhave <sup>c</sup>
22	Heineken <sup>b</sup>	44	Wolters Kluwer <sup>a</sup>

<sup>a</sup> No data available for 2004<sup>b</sup> No data available for 2004–2005<sup>c</sup> No data available for 2004–2006<sup>d</sup> No data available for 2004–2007<sup>e</sup> No data available for 2004–2008<sup>f</sup> No data available for 2004–2009<sup>g</sup> Data available for 2008–2012. For 2006, only data available regarding the extraordinary meeting<sup>h</sup> No data available for 2012. For 2008, only data available for the extraordinary meeting<sup>i</sup> For 2014, only data available for the extraordinary meeting<sup>j</sup> Corio NV merged with Klépierre SA on 31 March 2015<sup>k</sup> Delisted during sample period<sup>l</sup> SNS Reaal was nationalised on 1 February 2013

**Table 8** Websites and availability of meeting documents

Company	Website and availability (reference date: 6 December 2015)
Aalberts Industrie	<a href="https://www.aalberts.com/en/investor-relations/general-meeting/">https://www.aalberts.com/en/investor-relations/general-meeting/</a> (available for 2009–2014)
Accell Group	<a href="http://www.accell-group.com/nl/corporate-governance/algemene-vergadering-van-aandeelhouders/algemene-vergadering-van-aandeelhouders.htm">http://www.accell-group.com/nl/corporate-governance/algemene-vergadering-van-aandeelhouders/algemene-vergadering-van-aandeelhouders.htm</a> (available for all years in sample)
Aegon	<a href="http://www.aegon.com/en/Home/Investors/Shareholders-AGM/">http://www.aegon.com/en/Home/Investors/Shareholders-AGM/</a> (available for all years in sample)
Ahold	<a href="https://www.ahold.com/#!/Corporate-governance/Shareholders-meetings/Previous-meetings.htm">https://www.ahold.com/#!/Corporate-governance/Shareholders-meetings/Previous-meetings.htm</a> (available for all years in sample)
Akzo Nobel	<a href="https://www.akzonobel.com/corporate_governance/shareholders_meetings/agma/">https://www.akzonobel.com/corporate_governance/shareholders_meetings/agma/</a> (available for all years in sample)
AMG	<a href="http://www.amg-nv.com/Investors/Shareholder-Meetings/default.aspx">http://www.amg-nv.com/Investors/Shareholder-Meetings/default.aspx</a> (available for all years in sample)
Arcadis	<a href="https://www.arcadis.com/en/global/investors/who-we-are/general-meetings-download-center/">https://www.arcadis.com/en/global/investors/who-we-are/general-meetings-download-center/</a> (no data available for years in sample)
ASM International	<a href="http://www.asm.com/investors/corporate-governance/agma">http://www.asm.com/investors/corporate-governance/agma</a> (available for 2008–2014)
ASML	<a href="https://www.asml.com/asml/show.do?lang=EN&amp;ctx=9635&amp;rid=9874">https://www.asml.com/asml/show.do?lang=EN&amp;ctx=9635&amp;rid=9874</a> (available for 2007–2014)
BAM Groep, Koninklijke	<a href="http://www.bam.nl/corporate-governance/algemene-vergadering-van-aandeelhouders/archief">http://www.bam.nl/corporate-governance/algemene-vergadering-van-aandeelhouders/archief</a> (available for all years in sample)
Binck Bank	<a href="https://www.binck.com/nl/corporate/investor_relations/shareholder_information/meetings">https://www.binck.com/nl/corporate/investor_relations/shareholder_information/meetings</a> (available for 2009–2014)
Boskalis Westminster	<a href="http://www.boskalis.nl/ir/corporate-governance/algemene-vergadering-van-aandeelhouders.html">http://www.boskalis.nl/ir/corporate-governance/algemene-vergadering-van-aandeelhouders.html</a> (available for all years in sample)
Brunel International	<a href="http://www.brunelinternational.net/investor-relations/shareholders-meeting/agma-archive.4669640.lynkx">http://www.brunelinternational.net/investor-relations/shareholders-meeting/agma-archive.4669640.lynkx</a> (available for all years in sample)
Corbion	<a href="http://www.corbion.com/investor-relations/shareholder-information/shareholder-meetings">http://www.corbion.com/investor-relations/shareholder-information/shareholder-meetings</a> (available for 2012–2014)
Corio	<a href="http://www.corio-eu.com/">http://www.corio-eu.com/</a> Some documents are still available on ‘ <a href="http://www.corio-eu.com/">http://www.corio-eu.com/</a> ’ when accessing this website via a Google search for ‘site: <a href="http://www.corio-eu.com/">http://www.corio-eu.com/</a> notulen [year]’
Delta Lloyd	<a href="http://www.deltalloyd.com/nl/investor-relations/aandeel/aandeelhoudersvergadering/">http://www.deltalloyd.com/nl/investor-relations/aandeel/aandeelhoudersvergadering/</a> (available for all years in sample)

**Table 8** continued

Company	Website and availability (reference date: 6 December 2015)
DSM	<a href="http://www.dsm.com/corporate/generic/informationcenter.offset.0.limit.10.year.2014.html">http://www.dsm.com/corporate/generic/informationcenter.offset.0.limit.10.year.2014.html</a> (available for 2005–2014)
Eurocommercial Properties	<a href="http://www.eurocommercialproperties.com/financial/agm/">http://www.eurocommercialproperties.com/financial/agm/</a> (available for 2013 and 2014)
Exact Holding	<a href="http://www.exact.com/downloads/category/34-meeting-documentation-and-minutes">http://www.exact.com/downloads/category/34-meeting-documentation-and-minutes</a> (available for 2012–2014)
Fugro	<a href="http://www.fugro.com/about-fugro/corporate-governance/shareholder-meetings">http://www.fugro.com/about-fugro/corporate-governance/shareholder-meetings</a> (available for 2008–2014)
Gemalto	<a href="http://www.gemalto.com/investors/agm">http://www.gemalto.com/investors/agm</a> (available for all years in sample)
Heineken	<a href="http://www.theheinekencompany.com/investors/governance/agm">http://www.theheinekencompany.com/investors/governance/agm</a> (available for 2013 and 2014)
ING	<a href="http://www.ing.com/Investor-relations-1/Algemene-Vergadering/Jaarlijkse-Algemene-Vergadering/Jaarlijkse-Algemene-Vergadering/Archief.htm">http://www.ing.com/Investor-relations-1/Algemene-Vergadering/Jaarlijkse-Algemene-Vergadering/Jaarlijkse-Algemene-Vergadering/Archief.htm</a> (available for 2007–2014)
KPN	<a href="http://ir.kpn.nl/phoenix.zhtml?c=253757&amp;p=irol-agm">http://ir.kpn.nl/phoenix.zhtml?c=253757&amp;p=irol-agm</a> (available for all years in sample)
Nieuwe Steen Investments	<a href="http://www.nsi.nl/nl/Algemene-vergadering-van-Aandeelhouders?year=">http://www.nsi.nl/nl/Algemene-vergadering-van-Aandeelhouders?year=</a> (no documents available)
Nutreco	<a href="http://www.nutreco.com/en/About-us/Corporate-Governance/General-Meeting-of-Shareholders/">http://www.nutreco.com/en/About-us/Corporate-Governance/General-Meeting-of-Shareholders/</a> (available for 2008–2014)
Ordina	<a href="https://www.ordina.com/nl-nl/downloadcentrum/financieel/?Subfolder={9D859EA1-FDEB-4039-AD04-F1BE982E97F6}">https://www.ordina.com/nl-nl/downloadcentrum/financieel/?Subfolder={9D859EA1-FDEB-4039-AD04-F1BE982E97F6}</a> (available for 2008–2014)
Pharming Group	<a href="http://www.pharming.com/investor-media/shareholders/shareholders-meetings">http://www.pharming.com/investor-media/shareholders/shareholders-meetings</a> (available for all years in sample)
Philips	<a href="http://www.philips.com/about/investor/shareholderinfo/shareholdermeetings/previousshareholdermeetings/index.page">http://www.philips.com/about/investor/shareholderinfo/shareholdermeetings/previousshareholdermeetings/index.page</a> (available for all years in sample)
Randstad	<a href="http://www.ir.randstad.com/shareholder-information/agm/previous-meetings.aspx">http://www.ir.randstad.com/shareholder-information/agm/previous-meetings.aspx</a> (available for 2010–2014)
Reed Elsevier (RELX)	<a href="http://www.relx.com/investorcentre/shareholderinformation/Pages/AGMInformationNV.aspx">http://www.relx.com/investorcentre/shareholderinformation/Pages/AGMInformationNV.aspx</a> (available for all years in sample)
Royal Imtech	<a href="http://imtech.com/NL/corporate/Corporate-Governance/AGM/AGM-Meetings.html">http://imtech.com/NL/corporate/Corporate-Governance/AGM/AGM-Meetings.html</a> (available for 2007–2014)
SBM Offshore	<a href="http://www.sbmoffshore.com/investor-relations-centre/shareholder-information/share-holder-meetings/2008-2/">http://www.sbmoffshore.com/investor-relations-centre/shareholder-information/share-holder-meetings/2008-2/</a> (available for all years in sample)



**Table 8** continued

Company	Website and availability (reference date: 6 December 2015)
Sligro Food group	<a href="http://www.sligrofoodgroup.nl/investor-relations/ava-informatie/voorgaande-vergaderingen.htm">http://www.sligrofoodgroup.nl/investor-relations/ava-informatie/voorgaande-vergaderingen.htm</a> (available for all years in sample)
SNS Reaal	Website no longer available as a result of nationalisation in 2013
Ten Cate	<a href="http://www.tencate.com/nl/investor-relations/algemene-vergadering-van-aandeelhouders/default.aspx">http://www.tencate.com/nl/investor-relations/algemene-vergadering-van-aandeelhouders/default.aspx</a> (no data available for years in sample)
TKH Group	<a href="http://www.tkhgroup.com/nl/corporate-governance/ava">http://www.tkhgroup.com/nl/corporate-governance/ava</a> (available for 2010–2014)
TomTom	<a href="http://corporate.tomtom.com/agm.cfm">http://corporate.tomtom.com/agm.cfm</a> (available for all years in sample)
Unilever	<a href="https://www.unilever.com/investor-relations/agm-and-corporate-governance/agm-and-voting/agm-archive.html">https://www.unilever.com/investor-relations/agm-and-corporate-governance/agm-and-voting/agm-archive.html</a> (available for all years in sample)
Unit4	<a href="http://www.unit4.com/">http://www.unit4.com/</a> (no data available on the website as a result of delisting)
Vastned Retail	<a href="http://www.vastned.com/investor_relations/aandeelhouders_vergadering">http://www.vastned.com/investor_relations/aandeelhouders_vergadering</a> (available for all years in sample)
Vopak	<a href="https://www.vopak.com/investors/corporate-governance/shareholders/shareholders-meetings">https://www.vopak.com/investors/corporate-governance/shareholders/shareholders-meetings</a> (available for 2008–2014)
Wereldhave	<a href="http://www.wereldhave.com/minutes-agm-2007-2013">http://www.wereldhave.com/minutes-agm-2007-2013</a> (available for all years in sample)
Wolters Kluwer	<a href="http://wolterskluwer.com/investors/corporate-governance/general-meeting-of-shareholders/previously-held-agms.html">http://wolterskluwer.com/investors/corporate-governance/general-meeting-of-shareholders/previously-held-agms.html</a> (available for all years in sample)

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